

**DISTRICT OF COLUMBIA
DOH OFFICE OF ADJUDICATION AND HEARINGS**

DISTRICT OF COLUMBIA
DEPARTMENT OF HEALTH
Petitioner,

v.

OPEN A HOUSING, INC.
Respondent

Case No.: I-00-20223

FINAL ORDER

I. Introduction

On February 25, 2002, the Government served a Notice of Infraction upon Respondent Open A Housing, Inc., alleging that it violated 21 DCMR 707.3, by failing to have a sufficient number of waste containers, and 21 DCMR 700.3, by failing to containerize solid wastes properly. The Notice of Infraction alleged that the violations occurred on February 13, 2002, at 57 O Street, N.W. It sought a fine of \$1,000 for each offense.

Respondent initially filed a plea of Deny, but changed its plea to Admit with Explanation and has requested suspension or reduction of the fine. The Government has filed a reply to that request.

II. Summary of the Evidence

Respondent states that it is a nonprofit agency, which purchased the property at issue last year with the goal of renovating it to provide housing for women with mental disabilities. It states that the building only became vacant on February 6, after the last tenants who were in the

building at the time of the purchase moved out. Respondent admits that a large amount of trash was present on the property on February 13, but attributes that condition to illegal dumping and vandalism that occurred after the building became vacant. It states that it immediately removed the trash observed by the inspector and that it continues to remove items that are being dumped there. It also states that the \$2,000 fine will be a financial hardship.

The Government opposes Respondent's request for suspension or reduction of the fine, arguing that Respondent violated the regulations cited in the Notice of Infraction and that it should be held accountable. Because this conclusory response contains no argument or representations that address Respondent's claims, it can be given no weight in deciding whether any reduction of the fine is warranted. *DOH v. 3237 Limited Partnership*, OAH No. I-00-70320 at 4, n.3 (Final Order, May 17, 2002).

III. Findings of Fact

Respondent, a non-profit organization, owns a now-vacant apartment building at 57 O Street, N.W. Respondent's plea of Admit with Explanation establishes that, on February 13, 2002, it did not properly containerize solid waste at the property and that it had an insufficient number of waste containers to store the trash during the usual interval between trash collections. Those conditions were caused by the activities of others, who vandalized the property and dumped trash there. Respondent has acknowledged responsibility for the violations. It also remedied the violations promptly and has taken steps to avoid future violations. There is no evidence in the record that Respondent has a history of prior violations.

III. Conclusions of Law

The regulations at issue provide:

All solid wastes shall be stored and containerized for collection in a manner that will not provide food, harborage, or breeding places for insects or rodents, or create a nuisance or fire hazard.

21 DCMR 700.3.

If containers are used for the storage of rubbish, or a combination of rubbish and food waste (garbage), a sufficient number shall be provided to store such solid wastes which may accumulate on the premises during the usual interval between collections.

21 DCMR 707.3

Respondent's plea of Admit with Explanation establishes that it violated both regulations on February 13, 2002. The Rodent Control Act of 2000 classified violations of §§ 700.3 and 707.3 as Class 1 infractions, punishable by fines of \$1,000 for a first violation of each provision.¹ 16 DCMR 3201. Respondent is liable for the infractions even though the offending trash was deposited on its property by others. The regulations at issue, and the fines prescribed by the Council, are important public health measures intended to aid in the reduction of the serious rodent problem in this City. They represent a legislative and regulatory judgment that property owners must ensure that conditions at their property, regardless of their cause, do not contribute to the proliferation of rats. *DOH v. Lin*, OAH No. I-00-70185 at 3 (Final Order, January 29, 2002). Consequently, suspension of the fines is not appropriate. Nevertheless, I will reduce the

¹ The Rodent Control Act of 2000 is Title IX of the Fiscal Year 2001 Budget Support Act of 2000, effective October 19, 2000, D.C. Law 13-172. See 47 D.C. Reg. 8962 (November 10, 2000); 47 D.C. Reg. 6308 (August 11, 2000). Section 910(b) of that Act established new fines for violations of various rodent control measures, including §§ 700.3 and 707.3. 47 D.C. Reg. at 6339 (August 11, 2000).

finer in light of Respondent's acceptance of responsibility, their prompt remediation of the violations, and the absence of a history of prior violations. The fine for each violation will be reduced to \$500, a total of \$1,000.

Respondent's status as a non-profit organization does not entitle it to any further reduction. If it wishes, however, D.C. Official Code § 2-1801.03 permits it to seek an order authorizing it to pay the fine in monthly installments over a six-month period. To do so, it must file a motion for such relief within 15 days of service of this Order, and must file copies of its financial statements, bank records or similar financial information demonstrating that immediate payment of the fine would cause it undue financial hardship.

V. Order

Based upon the foregoing findings of fact and conclusions of law, it is, this _____ day of _____, 2002:

ORDERED, that Respondent shall pay a total of **ONE THOUSAND DOLLARS (\$1000)** in accordance with the attached instructions within twenty (20) calendar days of the mailing date of this Order (15 days plus 5 days service time pursuant to D.C. Official Code §§ 2-1802.04 and 2-1802.05); and it is further

ORDERED, that if Respondent fails to pay the above amount in full within twenty (20) calendar days of the date of mailing of this Order, interest shall accrue on the unpaid amount at the rate of 1½ % per month or portion thereof, starting from the date of this Order, pursuant to D.C. Code Official Code § 2-1802.03 (i)(1); and it is further

ORDERED, that failure to comply with the attached payment instructions and to remit a payment within the time specified will authorize the imposition of additional sanctions, including the suspension of Respondent's licenses or permits pursuant to D.C. Official Code § 2-1802.03(f), the placement of a lien on real and personal property owned by Respondent pursuant to D.C. Official Code § 2-1802.03(i) and the sealing of Respondent's business premises or work sites pursuant to D.C. Official Code § 2-1801.03(b)(7); and it is further

ORDERED, that, within 15 days of the service date of this Order, Respondent may file a motion to pay the fine in up to six monthly installments. Any such motion must be accompanied by copies of Respondent's financial statements, bank records and/or other documents sufficient to show that immediate payment of the fine will cause Respondent financial hardship.

FILED **07/09/02**

John P. Dean
Administrative Judge